

Court of Appeals
Division TWO
of The STATE OF WASHINGTON

State of Washington
Respondent

v.

Ernest Kornegay
Appellant

No. 52633-6-11
Statement of Additional
Grounds for Review.

FILED
COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
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I, Ernest Kornegay, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground One

The State charged Mr. Kornegay by information, with assault in the second degree, strangulation/suffocation. This incident allegedly occurred in alleged victim's bathroom in Port Orchard, WA. During trial the alleged victim, during testimony, alleged another incident that allegedly occurred in her kids bedroom. The court found Mr. Kornegay guilty of the kids bedroom incident even though that incident was never charged. To show which incident was charged please see (Response to Defendants motion to sever offenses for trial). The alleged victim did not testify that any strangulation/suffocation ever occurred in the bathroom on the day in question - insufficient evidence exists for a finding of guilt on the assault 2° strangulation charge.

"The 6th amendment to the U.S. Constitution and article 1 section 22 of the Washington State Constitution guarantee criminal defendants the right to be informed of the nature of the charges against them."

State v. Moton, 51 Wn.App. 455, 458-59, 754 P.2d 687 (1988)

Thus "it is a well settled rule in this state that a party cannot be convicted for an offense with which he was not charged."

State v. Garcia 65 Wn.App. 681, 686, 829 P.2d 241 (1992)

And, "When an information alleges only one crime, it is Constitutional error to instruct ... on a different uncharged crime."

State v. Kirwin, 166 Wn.App. 1659, 1669, 271 P.3d 310 (2012)

This court should reverse the conviction for assault 2° Strangulation/Suffocation for essential elements of the crimes were not supported by the trial courts findings of fact / insufficient evidence. Also conviction was based on uncharged offense.

Additional Ground Two

The state failed to prove the domestic violence aggravator beyond a reasonable doubt by failing to prove the essential element "over a prolonged period of time".

The abuse being alleged here is said by alleged victim to have occurred eight month into their relationship. (about August 2016). From August 2016 until November 2016 she testifies to three charged incidents. She also talked about an uncharged incident. All in all a 3-4 month time period. Which is insufficient to find it was over a "prolonged period of time". In past cases "Court of Appeals reviewed three prior Court of Appeals cases and concluded that they "Suggested that "years are required" in order to find a "prolonged period of time". (citing State v. Schoneck 98, Wn.App. 647, 651, 990 P.2d 472 (1999);

State v. Duval, 86 Wn. App. 871, 877, 940 P.2d 671 (1997);
State v. Quigg, 72 Wn. App. 828, 841, 866, P.2d 655 (1994)).

This Court should reverse the finding of guilt for the Domestic Violence Aggravator for insufficient evidence to find guilt.
Findings do not support.

Additional Ground Three

The state committed misconduct by expressing personal opinion on witness credibility on more than one occasion.
"Those factors make it very unlikely that Krystal devised this story... to come up with these elaborate tales."
"... makes it very unlikely that she's being vindictive..."
"What does she have to gain by lying? She has no other motive." "Kanesha was very honest about what she recalls and what she didn't." These statements deprived Mr. Kornegay a right to a fair trial. "Inflammatory personal opinions expressed by prosecution during closing arguments of murder case concerning the credibility of witnesses and the guilt of the accused denied defendant a fair trial". State v. Reed 102 Wn. 2d 140, 684 P.2d 699 (1984).

This Court should reverse and remand for new trial for denial of Mr. Kornegay's right to a fair trial under the U.S. Constitution.

Additional Ground Four

Insufficient charging document. The charging document in question is vague and lacks essential elements. Essential elements are the "facts" that must be proven beyond doubt to convict. Mr. Kornegay's charging document merely recites the statutes and R.C.W.'s for the charges. "The mere recitation of a numeral code section and the title of the offense does not satisfy the essential elements rule". City of Auburn v. Brooke 119 Wn. 2d 1623, 1627, 836 P.2d 212 (1992)

Additional Ground Five

Violation of Mr. Kornegay's Constitutional right to speedy trial. Mr. Kornegay was placed under arrest for being in possession of a stolen motor vehicle, possession of Unlawful Firearm, and a Department of Corrections warrant. Officers advised him that, that was the reason for arrest. At that point Mr. Kornegay's speedy-trial protections were triggered. He was not charged with those crimes for two weeks as he sat in Kitsap County jail. Nine months later the State amended the information adding additional charges related to original charges. Mr. Kornegay objected to all continuances until he was forced to waive to prepare for the delayed charges. Speedy for all charges should have been running from day of arrest.

"The right to speedy trial afforded by the 6th amendment attaches when a charge is filed or an arrest made that holds one to answer a criminal charge, whichever occurs first. Thus even when no formal charges are pending the restraint of an arrest triggers 6th amendment speedy trial protections." *State v. Iniguez* 143 Wash. App. 845, 180 P.3d 855 (2008)

Additional Ground Six

Cumulative ~~error~~ error

Date: 7-19-19

Signature: Et KJ